

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD GERALD ORR,

Plaintiff,

V.

GARY E. LUCAS, JACKIE BATTIES,
MICHAEL ANDERSON, and JACK HUFF,

Defendants.

No. C10-5648 RBL/KLS

REPORT AND RECOMMENDATION

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. The court is advised by Plaintiff Gerald Orr that he seeks dismissal without prejudice of this civil action. ECF No. 27. Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

DISCUSSION

On September 9, 2010, Plaintiff filed an application to proceed *in forma pauperis* and proposed civil rights complaint. ECF No. 1. On September 27, 2010, the court granted the application and filed Plaintiff's complaint. ECF NOS. 4 and 5. On December 28, 2010, Defendants filed a motion for more definite statement. ECF No. 16. That motion was stricken from the docket pending notification by Plaintiff to the court of his current address. ECF No. 17. On November 23, 2010, Defendants re-filed their motion for more definite statement. Plaintiff was granted an extension until March 7, 2011 to file his response. ECF No. 23.

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On January 31, 2011, Plaintiff filed a motion to dismiss asking that his case be dismissed without prejudice “with the stipulation” that he be authorized to immediately re-file an amended complaint after his release date of April 26, 2011. ECF No. 27.

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs

Defendants have not filed an answer or motion for summary judgment in this action.

The undersigned recommends that the Court dismiss this action without prejudice.

Plaintiff's request for a "stipulation" so that he may immediately re-file an amended complaint upon his release is unnecessary. As this dismissal is without prejudice, Plaintiff is not precluded from filing a complaint in a new action just because this case was dismissed.

CONCLUSION

The Court should dismiss this action without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **February 25, 2011**, as noted in the caption.

DATED this 3rd day of February, 2011.

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Karen L. Strombom
United States Magistrate Judge

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